

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV - 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Reform of the Interstate
Access Charge Rules

)
)
) RM- 4356
)

COMMENTS OF THE INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA

Joseph P. Markoski
Kerry E. Murray
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044
(202) 626-6600

Attorneys for Information
Technology Association of
America

November 1, 1993

No. of Copies rec'd
List ABCDE

0411
C B

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY OF POSITION	ii
I. INTRODUCTION	1
II. JURISDICTIONAL SEPARATIONS REFORM SHOULD PRECEDE ACCESS CHARGE REFORM	3
III. ACCESS CHARGE REFORM SHOULD INCLUDE THE ELIMINATION OF ALL SUBSIDIES EXCEPT DIRECT PAYMENTS TO QUALIFYING LOW-INCOME SUBSCRIBERS.. ..	4
IV. THE COMMISSION SHOULD CONTINUE TREATING ENHANCED SERVICE PROVIDERS THE SAME AS OTHER END USERS FOR ACCESS CHARGE PURPOSES	8
V. EFFICIENT INTERSTATE ACCESS PRICING WOULD AID THE DEVELOPMENT OF THE NATIONAL INFORMATION INFRASTRUCTURE	10
VI. THE COMMISSION SHOULD FOCUS ITS ENERGIES ON JURISDICTIONAL SEPARATIONS AND INTERSTATE ACCESS CHARGE REFORM	11
VII. CONCLUSION.....	11

SUMMARY OF POSITION

ITAA agrees with NARUC, USTA and the Commission's staff that the jurisdictional separations process and the Commission's interstate access charge rules should be reformed.

The Commission should proceed first with jurisdictional separations reform. In ITAA's view, the Commission cannot logically deal with access charge reform without knowing the magnitude of the costs that will ultimately be allocated to the federal jurisdiction. The accurate allocation of costs and the reduction, if not elimination, of inter-jurisdictional subsidies should be the goals of separations reform.

With respect to access charge reform, the Commission should focus its efforts on eliminating all subsidies except direct payments to low-income subscribers that are necessary to ensure that all Americans have access to the network. Critical to any meaningful access charge reform is the elimination of the CCLC, which inefficiently recovers recovers fixed NTS costs through minute-of-use charges. Rather than continuing such subsidization without any regard for efficient pricing, the Commission should eliminate the CCLC and allow the SLC to recover all NTS costs. Users requiring financial assistance to remain in the network should receive direct targeted subsidies. Further, access charge reform should continue to treat all end users the same; enhanced service providers should not be singled-out for discriminatory access charge treatment.

Achieving the economically efficient cost-based pricing of interstate access charges is essential to the development and deployment of the NII. Interstate access charges that are rife with subsidies and that penalize information service providers will inhibit the widespread, high volume use of the NII contemplated by the Administration.

Cost-based, economically efficient interstate access charges, by contrast, will encourage the use of the NII in the provision of economically critical information services.

Finally, the Commission should limit the scope of any proceeding it initiates to the reform of the current separations and access charge rules. The Commission should decline the invitation of USTA and others to address such issues as pricing flexibility and deregulation in the context of separations and access charge reform. These matters should be addressed separately, if the Commission finds such consideration to be warranted.

RECEIVED

NOV - 1 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Reform of the Interstate
Access Charge Rules

)
)
) RM-_____
)

COMMENTS OF THE INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA

The Information Technology Association of America ("ITAA"), by its attorneys, hereby submits the following comments in response to the Petition for Rulemaking ("Petition") which the United States Telephone Association ("USTA") filed with the Commission on September 17, 1993.¹ In its petition, USTA has asked the Commission to initiate a comprehensive rulemaking proceeding to address access charge reform.

I. INTRODUCTION

ITAA is the principal trade association of the computer software and services industry. Its member companies provide the public with a wide variety of computer-related services, including local batch processing, software design and support, systems integration, facilities management and network-based information services. The enhanced services provided by ITAA's member companies are used by business, government and residential customers, and include such diverse offerings as credit card authorization, computer-aided design and manufacturing, database retrieval, data distribution, electronic mail, electronic data interchange, gateways, information

^{1/} See Petition for Rulemaking of United States Telephone Association (filed Sep. 17, 1993) [hereinafter "USTA Petition"].

management, transaction processing, value-added network services, and other remote access data processing services. In delivering these enhanced services to their customers, ITAA's members rely on the communications services provided by local exchange carriers ("LECs") and long distance telephone companies.

USTA's Petition is the most recent in a series of proposals and analyses regarding interstate access charge reform. Within the past several months, the Commission has released for comment a Staff working paper regarding jurisdictional separations and access charge reform² and the National Association of Regulatory Utility Commissioners has asked the Commission to initiate a notice of inquiry to investigate these same issues.³ ITAA agrees with the underlying premise of each of these initiatives, namely, that the Commission's jurisdictional separations process and interstate access charge system -- which are rife with inefficient pricing and unnecessary subsidies -- should be reformed.

ITAA suggests that the Commission structure its consideration of these issues by proceeding first with jurisdictional separations reform. In ITAA's view, the Commission cannot logically deal with access charge reform without knowing the magnitude of the costs that will ultimately be allocated to the federal jurisdiction. The accurate allocation of costs and the reduction, if not elimination, of all inter-jurisdictional subsidies should be the goals of separations reform. Although jurisdictional separations is not an exact science, the cost allocation should more clearly reflect cost causation than it does today.

^{2/} Federal Communications Commission, "Federal Perspectives on Access Charge Reform, A Staff Analysis" (Apr. 30, 1993) [hereinafter "FCC Staff Working Paper"].

^{3/} See Petition for Notice of Inquiry Addressing Access Issues of the National Association of Regulatory Utility Commissioners (filed June 25, 1993).

With respect to access charge reform, the Commission's efforts should be focused on eliminating all subsidies except direct payments to low-income subscribers that are necessary to ensure that all Americans have access to the network. Achieving economically efficient cost-based pricing of interstate access is essential to the development of the national information infrastructure. Access charge reform should also continue to treat all end users the same; enhanced service providers should not be singled-out for discriminatory access charge treatment.

Finally, the Commission should limit the scope of any proceeding it initiates to the reform of the current separations and access charge rules. The Commission should decline the invitation of USTA and others to address such issues as pricing flexibility and deregulation in the context of separations and access charge reform. These matters should be addressed separately, if the Commission finds such consideration to be warranted.

II. JURISDICTIONAL SEPARATIONS REFORM SHOULD PRECEDE ACCESS CHARGE REFORM.

Jurisdictional separations reform should precede any comprehensive re-examination of the Commission's access charge rules. Separations reform, after all, will determine the overall proportion of LEC costs which will be allocated to the federal jurisdiction. As the Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee") correctly pointed out in its comments on the Commission's Staff working paper, "[t]he basic goal of separations reform should be to create a jurisdictionally transparent system that promotes efficient and consistent pricing, rather than arbitrarily assigning regulatory responsibility for pricing decisions."⁴ In other words, the goal of

^{4/} See Comments of the Ad Hoc Telecommunications Users Committee, "Federal Perspectives on Access Charge Reform: A Staff Analysis," at 25 (filed Sep. 23, 1993) [hereinafter "Ad Hoc Comments on FCC Staff Working Paper"].

accurately allocating the fixed, non-traffic sensitive ("NTS") costs of the LECs' local loops should drive separations reform.

Under the current separations system, the allocation of interstate costs does not accurately reflect interstate cost causation. Rather, there are "hidden costs" that are inappropriately allocated to the federal jurisdiction. The existence of such costs is exemplified by the wide discrepancy which exists between the interstate share of the LECs' total NTS costs (25 percent) and the interstate share of the LECs' total traffic (14.4 percent).⁵ This allocation, which was mandated by the Federal-State Joint Board in CC Docket No. 80-286, amounts to a large inter-jurisdictional subsidy of intrastate costs by interstate revenues.

To reform jurisdictional separations, all "hidden costs" which result in inter-jurisdictional subsidies must be eliminated. Only then will the federal jurisdictional share accurately reflect the costs incurred by the LECs to provide local access for interstate services. Once the separations process is reformed to produce an accurate allocation of costs between jurisdictions, the overall federal share should decrease. As a consequence, the pool of funds required to pay for local exchange access should also decrease, reducing the level of costs which must be recovered by interstate access charges.

III. ACCESS CHARGE REFORM SHOULD INCLUDE THE ELIMINATION OF ALL SUBSIDIES EXCEPT DIRECT PAYMENTS TO QUALIFYING LOW-INCOME SUBSCRIBERS.

As the Commission is well aware, the existing access charge rules were adopted in 1983 in response to two fundamental changes in the telephone industry. The first was the emergence and growth of competition in the provision of long distance telephone service. The second was the divestiture of the Bell Operating Companies by

^{5/} See FCC Staff Working Paper at 5.

American Telephone and Telegraph Company. In responding to these changes, the Commission sought to further a number of social objectives. These included, among other things, universal telephone service, high penetration rates, inexpensive residential service, and geographic averaging. The result has been distortions between the costs and rates for interstate services. Over the years these distortions have continued to grow. As the Commission's Staff working paper notes:

long distance rates have been held artificially high to mitigate increases in local rates. Moreover, long-distance rates traditionally have been averaged both geographically and between services without regard for cost. As a result, rates in lower cost areas are averaged with rates in higher cost areas, and local business rates are often far above residential rates, even though the costs of providing residential service are not lower.⁶

The current access rules continue such distortions implicitly and explicitly. Implicit subsidies include cost allocation rules that result in some access rates recovering more than the actual costs of providing service. Perhaps the most obvious subsidy in the existing access charge structure is the carrier common line charge ("CCLC"), which recovers that portion of fixed local loop costs allocated to the interstate jurisdiction which are not recovered by the subscriber line charge ("SLC"), a fixed charge imposed directly on subscribers. Since the SLC is not indexed to inflation, the proportion of charges recovered by the CCLC, which is imposed upon interexchange carriers on a minutes-of-use basis, continues to increase over time.

In addition to the CCLC, the current access charge rules impose fixed monthly charges on interexchange carriers that recover a number of explicit subsidies. Among these is the Universal Service Fund ("USF"), which requires interexchange carriers to contribute to a pool that is distributed to LECs with particularly high loop costs. In addition, the Commission has established the federal "Lifeline" program to reduce the

^{6/} Id. at 15.

SLC for lower-income households and the "Link-Up America" program to reduce the connection charges for new low-income subscribers.

As a first step to efficient pricing, all subsidies flowing through the interstate access charge system should be identified. Once identified, all subsidies which are not necessary to ensure that low-income subscribers have access to or are able to stay on the network should be eliminated.⁷ ITAA agrees with the Ad Hoc Committee that "[a] ubiquitous, universally affordable public telecommunications network is clearly one of our greatest national resources, and it is critical that nothing be done to compromise either its integrity and viability At the same time, . . . [the] retention of historic contribution and assistance mechanisms and programs for their own sake is no longer justifiable public policy."⁸ Access charge reform should therefore be undertaken with a view towards achieving efficient pricing, so as to avoid market distortions, and terminating automatic transfers to the LECs, so as to discourage management and operational inefficiencies.

Eliminating the subsidies for "high cost" exchanges would further both of these goals. The current access charge rules automatically assume that carriers in low density areas (i.e., the "high cost" exchanges) which encounter high costs should be subsidized. This approach fails to consider, however, that advances in wireless technology, digital carrier systems and decentralized digital switching systems have changed the way in which local exchange service is furnished. Although many rural exchanges may still face higher costs than those in urban areas, the cost differential has narrowed considerably over the past decade. More important, the "high cost" subsidy is not targeted to individual subscribers. Rather, it flows to LECs without regard to

^{7/} A better solution, which is beyond the Commission's authority, would be to fund all societally-driven subsidies with general federal revenues.

^{8/} Ad Hoc Comments on FCC Staff Working Paper at 27-28.

whether they service millionaires, the middle class, or those who actually require assistance to remain on the network. As a consequence, it is only by coincidence that "high cost" subsidies achieve a legitimate public policy goal. In effect, these subsidies encourage continued inefficiencies and discourage the use of efficiency-enhancing new technologies.

The manner in which the longstanding public policy goal of "universal service" has been pursued should also be re-examined. The current system has resulted in below-cost pricing of all basic residential exchange access service. Historically, the concern has been that full residential cost coverage would drive some subscribers off the network. Numerous federal and state studies, however, have shown that for the vast majority of residential telephone customers, the price elasticity of demand is almost zero.⁹ Thus, few residential subscribers would drop off the network if rates more closely reflected costs. For those few subscribers who would be forced to drop off the network because of their inability to pay, it would be more efficient to target subsidies directly to those in need of assistance, rather than subsidize all local service. Moreover, eliminating such across-the-board subsidies would, as discussed in Section V below, stimulate the use of information services and the deployment of the National Information Infrastructure ("NII").

Critical to any meaningful access charge reform is the elimination of the CCLC. Because the CCLC recovers NTS costs through minute-of-use charges, the revenues collected by the CCLC -- unlike the SLC -- bear no rational relationship to cost. Consequently, high volume users subsidize low volume users through a system with little accountability. Rather than continuing such subsidization without any regard for efficient pricing, the Commission should eliminate the CCLC and allow the SLC to recover all NTS costs.

^{9/} See id. at 15.

For most subscribers, the effect of an increase in the SLC would be minimal because the SLC increase would be at least partially offset by the elimination of the CCLC. ITAA, however, recognizes that permitting the SLC to rise to full cost could affect the ability of a small number of low-income subscribers to stay on the network. Therefore, the Lifeline and Link-Up America programs should be revitalized and reformed for the specific purpose of ensuring that cost-based pricing does not result in low-income subscribers dropping off the network or never gaining access to the network due to one-time connection charges. Unlike today's system, however, this subsidy should be explicit and targeted directly -- for example, in the form of subscriber bill credits -- to those in need of assistance. To ensure accountability and efficient pricing, these funds should be supported by a surcharge levied on the non-traffic sensitive SLC. Since these assistance funds would be non-traffic sensitive costs, their funding is most efficiently accomplished through the flat-rate SLC.

IV. THE COMMISSION SHOULD CONTINUE TREATING ENHANCED SERVICE PROVIDERS THE SAME AS OTHER END USERS FOR ACCESS CHARGE PURPOSES.

Whatever approach the Commission ultimately adopts with respect to separations and access charge reform, it should continue to treat enhanced service providers the same as other end users. The existing access charge dichotomy between "end user" and "carrier's carrier" access charges has worked well and should not be disturbed. As the records amassed in CC Docket Nos. 87-215 and 89-79 make clear, to single out enhanced service providers -- alone among end users -- for a different access charge treatment would be both ill-advised and unlawful.¹⁰

^{10/} As made clear in Section III above, the current access charge system, which imposes inefficiently-priced charges upon interexchange carriers, is sorely in need of reform. But at least the present system, deficient as it may be, reflects an historic compromise to which regulated interexchange carriers have adapted to without totally distorting the markets they serve. By contrast, imposing unprecedented "carrier's carrier" access charges on any end users, including enhanced service providers, would be disastrous for the burgeoning information services industry.

To begin with, there is no difference in the manner in which enhanced service providers and other end users employ the communications network. Just as lawyers, accountants, department stores, airlines and other businesses use communications to deliver a product or service to their customers, enhanced service providers use communications to deliver information services to their customers. And, unlike long distance telephone companies, enhanced service vendors and other end users do not provide common carrier communications services, i.e., services which transmit third party messages in unaltered form from one subscriber to another. As a consequence, enhanced service providers and other end users do not want, need or use the unique network functionalities required by long distance telephone carriers.¹¹

Singling out enhanced service providers for different access charge treatment would also be unlawful. Section 202(a) of the Communications Act prohibits "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service" and subjecting "any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage." Clearly, treating enhanced service providers differently than other end users would be unlawfully discriminatory and subject enhanced service providers to undue and unreasonable prejudice and disadvantage.¹² The Commission should, therefore, continue to treat enhanced service providers the same as other end users for access charge purposes.

^{11/} Feature Group service, which has been transformed into Basic Serving Arrangements in the Open Network Architecture environment, was designed to meet the needs of long distance carriers.

^{12/} 47 U.S.C. § 202(a) (1992).

V. *EFFICIENT INTERSTATE ACCESS PRICING WOULD AID THE DEVELOPMENT OF THE NATIONAL INFORMATION INFRASTRUCTURE.*

Reform of the interstate access charge rules would aid, and indeed is essential to, the continued development and deployment of the NII. The Administration's goals for the NII are set forth in the September 15, 1993 report issued by the Department of Commerce's Information Infrastructure Task Force, entitled "The National Information Infrastructure: Agenda for Action." Among the goals articulated by the Department is the development of "a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips."¹³ Interstate access charges that are rife with subsidies and that, as a result, penalize information service providers would inhibit the widespread, high volume use of the NII contemplated by the report.

Cost-based, economically efficient interstate access charges, by contrast, would encourage the use of the NII in the provision of economically critical information services to more people. In this regard, the Commission should recognize that the NII is not merely a transmission network. Rather, the NII is the whole panoply of applications and services that are critical to the Nation's competitive success in today's increasingly global economy. Discouraging the use of the NII through the inefficient pricing of transmission capacity or the discriminatory access charge treatment of enhanced service providers would run counter to the economic goals of the NII and this Administration.

^{13/} Department of Commerce, "The National Information Infrastructure: Agenda for Action," at 3 (Sep. 15, 1993).

VI. THE COMMISSION SHOULD FOCUS ITS ENERGIES ON JURISDICTIONAL SEPARATIONS AND INTERSTATE ACCESS CHARGE REFORM.

USTA and others have encouraged the Commission to address a number of other significant regulatory issues in the context of interstate access charge reform. In particular, USTA has urged the Commission to consider flexible pricing and deregulation for the LECs. The Commission should not be distracted by these requests.

Reform of the jurisdictional separations process and the access charge rules will demand a great deal of effort on the part of the Commission. For this reason alone, they should be considered separately from the matters proposed by USTA. Moreover, there is no necessary linkage between jurisdictional separations and access charge reform, on the one hand, and flexible pricing and deregulation, on the other hand. Furthermore, separations and access charge reform are too important to become bogged down by issues which, standing alone, are likely to draw considerable controversy. And, despite USTA's claims to the contrary, the development of the NII does not require the Commission to resolve every regulatory issue at the same time. Separations and access charge reform should proceed at their own pace and be judged on their own merits, without regard to the other issues on USTA's regulatory agenda.

VII. CONCLUSION

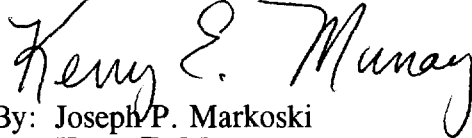
For all of the reasons set forth above, the time is ripe for comprehensive jurisdictional separations and interstate access charge reform. In undertaking separations reform, the Commission should ensure that inter-jurisdictional subsidies are eliminated. Once an accurate picture of interstate costs is developed, access charge reform should focus on economically efficient pricing. All hidden subsidies should be identified and eliminated, and the SLC -- rather than the CCLC -- should recover all

NTS costs. To prevent subscriber drop-off or inability to connect, direct subsidies should be provided to low-income subscribers. Such subsidies should be explicit and recovered through the SLC. Whatever approach the Commission ultimately takes with respect to access charge reform, however, it should continue to treat all end users, including enhanced service providers, the same for access charge purposes.

Access charge reform is particularly necessary at this time to further the development of the NII. The Commission, however, should consider jurisdictional separations and access charge reform alone, without the unnecessary baggage of other regulatory issues.

Respectfully submitted,

THE INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA

A handwritten signature in cursive script, reading "Kerry E. Murray".

By: Joseph P. Markoski
Kerry E. Murray
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044
(202) 626-6600

Its Attorneys

November 1, 1993

CERTIFICATE OF SERVICE

I, Geneather Lloyd, hereby certify that copies of the foregoing Comments of the Information Technology Association of America, were served by hand or by First-Class United States mail, postage prepaid, upon the parties appearing on the following parties this 1st day of November, 1993.

Honorable James H. Quello
Chairman
Federal Communications
Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Honorable Andrew C. Barrett
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

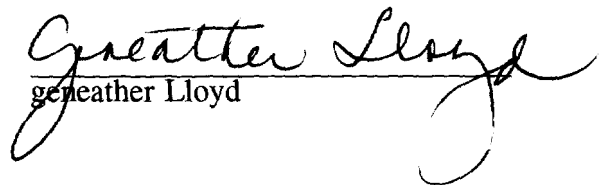
Honorable Ervin S. Duggan
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Martin T. McCue
Linda Kent
United States Telephone Association
900 19th Street, N.W.
Suite 800
Washington, D.C. 20006-2105

Peggy Reitzel
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Copy Contractor
Room 246
1919 M Street, N.W.
Washington, D.C. 20554


Geneather Lloyd